



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,821	03/29/2004	Jean-Louis H. Gueret	08048.0048-000	1007

7590 03/31/2008
Thomas L. Irving
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
----------	--------------

3751

MAIL DATE	DELIVERY MODE
-----------	---------------

03/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/810,821	Applicant(s) GUERET, JEAN-LOUIS H.	
	Examiner Huyen Le	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-11, 15, 17, 19, 21-24, 26-34, 36-43, 47-51, 55, 57, 59, 61-64 and 66-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 4-6,12-14,16,18,20,25,35,44-46,52-54,56,58,60 and 65.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 7-8, 15, 17, 22-24, 26, 27, 31-33, 39-43, 47-49, 55, 57, 62-64, 66-67, 71-73, 78-80 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 62-114781.

The JP 62-114781 reference discloses an applicator for applying a cosmetic product comprising a plurality of applicator elements 1 wherein the plurality of applicator elements 1 comprises at least two applicator elements 3 and 3', wherein each of the at least two applicator elements 1 comprises at least one periodic pattern, wherein the at least one periodic pattern comprises at least one undulation, wherein a first periodic pattern repeats regularly along a first applicator element 3 and a second periodic pattern repeats regularly along a second application element 3', wherein the first periodic patterns is different the second periodic pattern (Fig. 2).

Regarding claims 27, 31, 32, 39-41, 67, 71, 72 and 78-80, the introductory statement and all other functional statements of the intended use have been carefully considered but deemed not to impose any structural limitations on the claim(s) distinguishable over the applicator device of JP 62-114781 which is capable of being used to apply nail varnish, mascara product.

Regarding claim 2, the applicator elements are bristles.

Regarding claim 3, at least two different periodic patterns comprise at least one periodic pattern of one bristle and at least one periodic pattern of another bristle distinct from the one bristle.

Regarding claim 7, each of the at least two different periodic patterns comprises at least one undulation having an amplitude that is different from an amplitude of an undulation of another of the at least two different periodic patterns (Figs. 4A and 4B).

Regarding claim 8, each of the at least two different periodic patterns comprises at least one undulation having a spatial frequency that is different from a spatial frequency of an undulation of another of the at least two different periodic patterns.

Regarding claim 9, at least 1 percent of the bristles comprise the same periodic pattern.

Regarding claim 15, at least two of the bristles comprise lengths different from one another (Fig. 3).

Regarding claim 17, one of the bristles comprises a circular cross-section.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-11 and 49- 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 62-114781.

Although the JP 62-114781 reference does not disclose that 1 percent to 99 percent or 20 percent to 80 percent or 30 to 60 percent of the bristles comprise the same periodic pattern, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a percentage of periodic pattern of the bristles within a certain range to best fit a particular applicator design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

5. Claims 19 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 62-114781 in view of EP 0651955.

Although JP 62-114781 does not disclose that the bristle includes a hollow cross-section, attention is directed to the EP 0651955 reference which teaches another applicator having a bristle with a hollow cross-section.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ hollow cross-sections bristles for the JP 62-114781 applicator in view of the teaching of EP 0651955 for reducing material thus the weight and cost of the brush.

6. Claims 21 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 62-114781.

Although the JP 62-114781 reference does not explicitly disclose the diameter of bristles in the range of 0.05 millimeter to 0.4 millimeter, it would have been obvious to

Art Unit: 3751

one of ordinary skill in the art at the time the invention was made to select a diameter for the bristles within a certain range to best fit a particular (lipstick tube) design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

7. Claims 28-30, 34, 68-70 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 62-114781 in view of Andrews (3,393,962).

Although the JP 62-114781 reference discloses a twisted core supporting the bristles 1, attention is directed to the brush applicator 1 having bristles 15 supported by a twisted core wire 12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the JP 62-114781 brush applicator with a twisted core wire 12 as taught by Andrews for securing the bristles to the applicator.

8. Claims 36, 37, 75, 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 62-114781.

The JP 62-114781 reference discloses a receptacle for containing a nail or eyelash or eyebrow product. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a receptacle containing the nail product or eyelash/eyebrow product with the JP 62-114781 applicator when the applicator were used for nail or eyelash/eyebrow application by a user.

9. Claims 38 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 62-114781 in view of Montgomery (4,403,624)

Although the JP 62-114781 reference does not disclose a wiping member, attention is directed to the Montgomery reference which teaches another applicator having a wipe member for removing excess cosmetic product.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the JP 62-114781 applicator device with a wiper member in view of the teaching of the Montgomery reference for removing excess cosmetic product before applying.

Response to Arguments

10. Applicant's arguments filed on 03/07/2008 with respect to claims 1-80 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Huyen Le/
Primary Examiner
Art Unit 3751
